

April 13, 1995

RECEIVED

APR 13 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: GC Docket No. 95-21 - Amendment of 47 CFR Section 1.1200 et seq. Concerning
Ex Parte Presentations in Commission Proceedings.

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies
of their "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me
should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosure

No. of Copies rec'd 025
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

1 APR 13 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of 47 CFR Section 1.1200 et seq.
Concerning Ex Parte Presentations in
Commission Proceedings

GC Docket No. 95-21

COMMENTS OF PACIFIC BELL AND NEVADA BELL

Pacific Bell and Nevada Bell ("the Pacific Companies") file these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM").¹ In this proceeding the Commission proposes to amend its ex parte rules to make them simpler, clearer and, in some instances, less restrictive. The NPRM proposes that ex parte presentations should be prohibited only in proceedings in which such presentations are barred by the Administrative Procedure Act, but to permit them in other proceedings under a "permit-but-disclose" rule. The Pacific Companies support the Commission's intention to simplify its ex parte rules.

A. The Current Rules are Complex

The current ex parte rules are complex. As outlined in the NPRM, proceedings are classified into three categories: "restricted," "non-restricted," and

¹ Amendment of 47 C.F.R. Section 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, GC Docket No. 95-21, Notice of Proposed Rulemaking, FCC 95-52, released February 7, 1995

“exempt.” With respect to each category, the Rules specify treatment of ex parte presentations. The Rules also include detailed exceptions to the generalized rules. In addition, additional restrictions are imposed for matters listed on the Sunshine Agenda. The Pacific Companies agree with the Commission that a simpler system would be possible and would serve the public interest.

B. Classification of Proceedings

The NPRM proposes to allow ex parte presentations in all proceedings, except for those specifically restricted by the Administrative Procedure Act.² For those not covered by the APA, the Commission believes that a “permit-but-disclose” rule would serve the public interest. The Pacific Companies agree. Such modification to the Rules would eliminate much of the confusion surrounding the status of a proceeding with respect to ex parte presentations. It would serve the public interest to eliminate the need to wade through a myriad of rules just to determine whether or not the ex parte presentation could be made and it would serve the public interest for a party to know that the “permit-but-disclose” rule would ensure that the content of such presentations, whether written or oral, would become part of the public record.

C. Exempt Proceedings

The Commission proposes to exempt certain types of proceedings from the ex parte rules (1.1204(b)). Pacific agrees that informal complaint proceedings as well as notice of inquiry proceedings are appropriate proceedings in which to forego the

² NPRM, para. 13.

ex parte restrictions. The Commission invites parties to propose other types of proceedings which should be treated as exempt, giving as an example tariff proceedings, which are treated as exempt prior to investigation under today's rules.³ The Pacific Companies support treating tariff matters as exempt from ex parte restrictions prior to investigation. Treating tariff filings as exempt prior to investigation will promote the free exchange of information between the party seeking to introduce the tariff, other interested persons, and the Commission staff reviewing the proposed tariff.

D. Sunshine Period Prohibition

Under the current rules, ex parte presentations are prohibited during the "Sunshine Period." This restriction is intended to establish a "period of repose" during which Commission decisions can be made in an atmosphere of relatively calm deliberation.⁴ The NPRM identifies one recurring problem in the application of this prohibition. During the Sunshine Period, after an item has been adopted but before the text has been issued, it is not uncommon for Commissioners or Commission Staff to attend open meetings or symposia at which issues of public interest may be presented or discussed. Under the current rules, such speeches or discussions constitute prohibited presentation and waivers must be granted to allow Commission participation in such events. The NPRM concludes that discussion of matters at widely attended events does not appear disruptive and that attempting to regulate such contact serves to chill public discussion. The NPRM seeks comment on whether a blanket exemption

³ See Id., para. 29.

⁴ Id., para. 39.

from the sunshine prohibitions in such circumstances. The Pacific Companies agree that such a blanket exemption should be adopted. As long as participation in such a meeting is truly open, and not by invitation only, no party should be adversely impacted and the public would benefit from the participation of the Commission and Commission staff members in addition to other interested parties in these public forums.

D. Miscellaneous Proposals

The NPRM proposes that notifications of ex parte communication should be filed in all “permit-but-disclose” proceedings. For oral ex parte presentations, the NPRM recommends that such notifications summarize the entire content of the presentations, even if the data or arguments are not “new” and that those summaries must include more than a “mere listing of the issues discussed.”⁵ Further, the NPRM suggests that if Commission employees involved in the ex parte presentation believe that the summary filed is deficient, a supplement may be required. The Pacific Companies generally support rules requiring complete disclosure of the content of the presentation and agree that if such additional documentation is to be required it is appropriate that an additional three days be allowed to file the more detailed summary. The Pacific Companies, however, are concerned that the definition of “deficiency” is very subjective and therefore request that if this rule change is adopted it be administered in such a way that balances the amount of additional information required to be included in the notification with the additional administrative burden it imposes.


⁵ NPRM, para. 45.

Conclusion

The Pacific Companies support the Commission's effort to streamline the very complex ex parte rules. We suggest that the Commission implement such change in accordance with these Comments.

Respectfully submitted,

PACIFIC BELL
NEVADA BELL



JAMES P. TUTHILL
NANCY C. WOOLF

140 New Montgomery Street, Rm. 1523
San Francisco, California 94105
(415) 542-7657

JAMES L. WURTZ
MARGARET E. GARBER

1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 383-6472

Their Attorneys

Date: April 13, 1995